

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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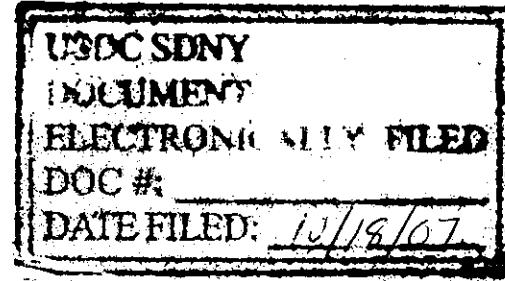
LEROY BROWN, : -----

Petitioner, : 07 Civ. 8672 (RMB) (AJP)

-against- : -----

KENNETH S. PERLMAN, Superintendent of :
Mid-State Correctional Facility,

: Respondent.



: ----- x -----

ANDREW J. PECK, United States Magistrate Judge:

Upon the Petition of Leroy Brown, praying that a writ of habeas corpus be issued to respondent, requiring said respondent to appear and answer the allegations of the petitioner, and the Court in accordance with Rule 4 of the Rules Governing Sec. 2254 cases in the United States District Court, 28 U.S.C. foll. Sec. 2254, having reviewed the Petition and having determined that the Petition should not be summarily dismissed pursuant to Rule 4,^{1/} it is hereby

^{1/} The Court cannot determine from the Petition – in the absence of petitioner's state appeal and coram nobis papers – whether all of Brown's current habeas claims have been fully exhausted in state court. For example, it is not clear if Brown would need to bring a C.P.L. § 440 motion to exhaust his ineffective assistance of trial counsel claims. Brown should review his petition and determine if he fully presented all of his habeas claims to the state courts and if not, remedy that.

ORDERED, that the Clerk of the Court serve, by certified mail, a copy of this Order, and the underlying Amended Petition, on the Attorney General of the State of New York and on the District Attorney of New York County, and it is further

ORDERED, that respondent shall file a complete and entire answer to the Petition by December 7, 2007, and that any request for an extension should be made to the undersigned, and it is further

ORDERED, that respondent shall file with its answer(s) all relevant parts of the state court record including, but not limited to, the relevant parts of the trial transcript, sentencing minutes, trial court decision, appellate briefs, appellate decisions, and post-trial motions and decisions, and it is further

ORDERED that respondent shall deliver courtesy copies of all such papers to my chambers (500 Pearl Street, Room 1370), and it is further

ORDERED that the parties follow the "Individual Practices of Magistrate Judge Andrew J. Peck," a copy of which is enclosed.

* * *

The parties shall advise the Court as to whether they jointly consent to decision on petitioner's habeas corpus petition by a United States Magistrate Judge (that is, the undersigned), pursuant to the enclosed forms and explanations.

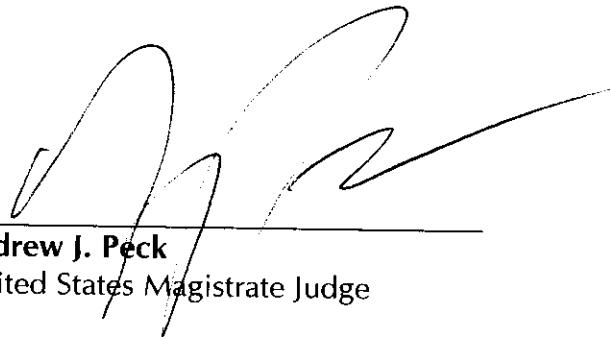
Each party shall either: (1) sign the consent form to indicate consent and return it to the Court (with a copy to the other side) or (2) inform the Court by letter that the party does not consent.

This Order is not meant to in any way interfere with the parties' absolute right to decision by a United States District Judge, but is merely an attempt at preserving scarce judicial resources, particularly since the matter has been referred to me for a Report and Recommendation on this habeas petition, and reminding the parties of their option pursuant to 28 U.S.C. § 636(c).

The parties are to notify the Court pursuant to the above procedures by no later than December 7, 2007.

SO ORDERED.

DATED: New York, New York
October 18, 2007



Andrew J. Peck
United States Magistrate Judge

Copies to: Leroy Brown
Andrew Cuomo, Attorney General of
the State of New York
Robert Morgenthau, District Attorney
of New York County
Judge Richard M. Berman